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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,478

11/20/2003

Ram Pandit

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EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT

PAPER NUMBER

3624

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/716,478	<b>Applicant(s)</b> PANDIT, RAM	
	<b>Examiner</b> JOHNNA R. LOFTIS	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/13/09 has been entered.

***Response to Arguments***

2. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

3. In response to Applicant's attempt to traverse Examiner's Official Notice, Examiner notes that the Official Notice was first taken in the Non-Final Office Action mailed 4/17/08. In the subsequent response, Applicant failed to challenge the notice. Per MPEP 2144.03(c), these statements are taken as admitted prior art because no traversal of this statement was made in the subsequent response.

4. Rejections under 35 USC 101 have been introduced.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-10 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must

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(1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. (See Memorandum from John J. Love, Deputy Commissioner for Patent Examination Policy, dated January 7, 2009) There are two corollaries to the machine-or-transformation test set forth in the memorandum. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent eligible. The apparatus must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting is not sufficient to pass the test.

Applicant's method steps fail both corollaries of the new Federal Circuit decision since they are not tied to a particular apparatus. Thus, claims 1-10 are non-statutory.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-6, 8-10 13-16, 18-20, 23-26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strozniak, "Sharing the Load."

As per claim 1, Strozniak teaches analyzing load data based on dedicated and common carrier rates (page 5 - General Mills considers the cost effectiveness of transporting Georgia-Pacific products instead of returning an empty truck, while Georgia-Pacific is considering the cost effectiveness of using the General Mills truck instead of the more expensive option of sending their own (dedicated) truck for transport), the load data having a plurality of load data, wherein the load data has an origination location and a destination location (page4, para3 – loads are analyzed to create shared routes between manufacturers); automatically creating the tour schematic based on analysis of the past load history (page4, para3 – automated system wherein loads are analyzed to create shared routes between manufacturers); and validating the created tour schematic (page8, top – routes are created based on business rules). Strozniak teaches analyzing routes taken to determine the cost effectiveness of using a dedicated or common (shared) carrier. Since Strozniak teaches determining cost savings of combining or sharing routes, there must be some analysis on past data to determine a comparison for future routes. While Strozniak is silent as to whether the analysis of routes uses historical data, Examiner asserts that it is old and well known in the art of route planning to analyze previous or historical data as a way to forecast better alternative route plans. This concept is widely known in basic

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Operations Research. The use of historical data benefits the analyzer as it can show how changing variables can produce minimizing or maximizing effects on the outcome.

As per claim 2, Strozniak teaches analyzing past load history further comprises setting the first accent point at a cluster of origination or destination locations (page7para3 – locations are set based on load availability, ie, loads are being shipped from Dallas to Atlanta – the route back to Dallas includes a stop in Memphis due to load requiring transport from Atlanta and load requiring transport from Memphis to Dallas).

As per claim 3, Strozniak teaches the first accent point is set (page7para3 – locations are set based on load availability, ie, loads are being shipped from Dallas to Atlanta – the route back to Dallas includes a stop in Memphis due to load requiring transport from Atlanta and load requiring transport from Memphis to Dallas) but does not explicitly teach the cluster of origination or destinations exceeds a threshold value. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time of the invention to consider threshold values when setting accent points to keep scheduled tours within limits. If a tour is scheduled between Dallas and Atlanta, it would be costly and time consuming to schedule a second lane to Pittsburgh then continuing on the Dallas. Pittsburgh would be “out of the way”, so to speak. The threshold values would keep the costs down and would optimize deliveries.

As per claim 4, Strozniak teaches analyzing past load history further comprises establishing the first lane from the first accent point to the second accent point if the past load history indicates a number of load data from within the first accent point to within the second accent point (page7para3 – locations are set based on load availability, ie, loads are being shipped from Dallas to Atlanta – the route back to Dallas includes a stop in Memphis due to load

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requiring transport from Atlanta and load requiring transport from Memphis to Dallas) but does not explicitly teach exceeding a threshold value. Official notice is taken that it would have been obvious to one of ordinary skill in the art at the time of the invention to consider threshold values when setting accent points to keep scheduled tours within limits. If a tour is scheduled between Dallas and Atlanta, it would be costly and time consuming to schedule a second lane to Pittsburgh then continuing on the Dallas. Pittsburgh would be “out of the way”, so to speak. The threshold values would keep the costs down and would optimize deliveries.

As per claim 5, Strozniak teaches creating the tour schematic further comprises linking the first lane with a second lane, wherein the second accent point of the first lane is the same as the first accent point of the second lane (page7para3 – locations are set based on load availability, ie, loads are being shipped from Dallas to Atlanta – the route back to Dallas includes a stop in Memphis due to load requiring transport from Atlanta and load requiring transport from Memphis to Dallas)

As per claim 6, Strozniak teaches creating the tour schematic further comprises linking the second land with a third lane, wherein a second accent point of the second lane is the same as the first accent point of the third lane, and further wherein a second accent point of the third lane is the same as the first accent point of the first lane (page7para3 – locations are set based on load availability, ie, loads are being shipped from Dallas to Atlanta – the route back to Dallas includes a stop in Memphis due to load requiring transport from Atlanta and load requiring transport from Memphis to Dallas)

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As per claim 7, Strozniak teaches validating the created schematic further comprises validating that the created schematic meets a set of business rules (page7, para4 - page8, para1 – logistics are automated based on company rules).

As per claim 8, Strozniak teaches logistics are automated based on company rules (page7, para4 - page8, para1), but does not explicitly teach the set of business rules includes at least one of a maximum length without driver break, a maximum total miles within the schematic and a minimum total miles within the schematic. Official notice is taken that it would have been obvious to one of ordinary skill in the art to consider business rules such as maximum and minimum length when setting accent points to keep scheduled tours within limits. If a tour is scheduled between Dallas and Atlanta, it would be costly and time consuming to schedule a second lane to Pittsburgh then continuing on the Dallas. Pittsburgh would be “out of the way”, so to speak. The threshold values would keep the costs down and would optimize deliveries.

As per claim 9, Strozniak teaches logistics are automated based on company rules (page7, para4 - page8, para1), but does not explicitly teach the set of business rules includes at least one of a maximum length without driver break, a maximum total miles within the schematic and a minimum total miles within the schematic. Official notice is taken that it would have been obvious to one of ordinary skill in the art to consider business rules such as maximum and minimum length when setting accent points to keep scheduled tours within limits. If a tour is scheduled between Dallas and Atlanta, it would be costly and time consuming to schedule a second lane to Pittsburgh then continuing on the Dallas. Pittsburgh would be “out of the way”, so to speak. The threshold values would keep the costs down and would optimize deliveries.



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As per claim 10, Strozniak teaches logistics are automated based on company rules (page7, para4 - page8, para1), but does not explicitly teach the set of business rules includes at least one of a maximum length without driver break, a maximum total miles within the schematic and a minimum total miles within the schematic. Official notice is taken that it would have been obvious to one of ordinary skill in the art to consider business rules such as maximum and minimum length when setting accent points to keep scheduled tours within limits. If a tour is scheduled between Dallas and Atlanta, it would be costly and time consuming to schedule a second lane to Pittsburgh then continuing on the Dallas. Pittsburgh would be “out of the way”, so to speak. The threshold values would keep the costs down and would optimize deliveries..

Claims 11-20 are directed to the system for performing the method of claims 1-10. Since Strozniak teaches a collaborative logistics system running over the Internet (page 4), the same rejections as applied to claims 1-10 are applied to claims 11-20.

Claims 21-30 are directed to the article of manufacture with instructions for performing the method of claims 1-10. Since Strozniak teaches a collaborative logistics system running over the Internet (page 4), the same rejections as applied to claims 1-10 are applied to claims 11-30.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Baush et al, “Consolidating and Dispatching Truck Shipments of Mobil Heavy Petroleum Products”

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brad Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/jl/  
4/27/09

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624